

State and Local Government in Louisiana: An Overview 2008-2012 Term

CHAPTER 2 — STATE GOVERNMENT FUNCTIONS

Part H. Insurance

For the year ended June 30, 2007, Louisianians spent approximately \$20.6 billion in insurance premiums; in addition, over 1,700 insurance companies transacted business in Louisiana during that year. Also in Fiscal Year 2006-2007, the Department of Insurance collected over \$285 million in premium taxes from insurance companies for the state general fund. The federal McCarran-Ferguson Act, enacted in 1945, clarified that the primary jurisdiction for regulation of "the business of insurance" lies with the states. While this jurisdiction has been somewhat eroded by subsequent federal laws and jurisprudence, insurance remains a business primarily regulated by the states.

COMMISSIONER OF INSURANCE

Louisiana's commissioner of insurance is a constitutional office that was created in 1960. The office is held by a statewide elected official whose term is concurrent with that of the governor. Article IV, Section 11 of the Louisiana Constitution states:

"There shall be a Department of Insurance, headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution and provided by law."

Since the constitution does not authorize any powers or duties for the department or the commissioner, the commissioner and the department have only those powers and duties provided by the laws adopted by the legislature. This was a result of a struggle in the Constitutional Convention in 1973 between those who wanted to add language to constitutionally empower the commissioner to regulate insurance and those who opposed creating a "czar" over the insurance industry. The fundamental conflict was over whether the Insurance

Louisiana Premiums Written by Type
of Coverage for the Year Ended
June 30, 2007

Type of Coverage	Number of Companies	Written Premium
Property & Casualty	776	7,790,158,807
Life & Health	580	9,770,594,782
Surplus Lines	201	961,540,635
Fraternal	22	73,655,187
HMO	8	1,905,655,187
Title	23	112,886,283
Other*	178	Indeterminable
TOTAL	1,788	20,613,936,956

*Other includes:

- 14 Group Self Insurance
- 34 Vehicle Mechanical Breakdown
- 15 Nonprofit Companies
- 5 Property Residual Value
- 5 Reinsurance
- 67 Risk Retention
- 9 Interlocal Risk Management
- 1 Service
- 16 Unlicensed Tax Insurers
- 12 Viatical Settlement Providers

Rating Commission, appointed by the governor, or the elected commissioner of insurance would regulate insurance rates. The supporters of the insurance rating commission prevailed and for 35 years Louisiana had an insurance commissioner whose powers excluded rate-making authority. (See "Systems for Ratemaking" below.)

Article IV, Section 20 of the constitution additionally authorizes the legislature by two-thirds vote to make the commissioner of insurance an appointed position and merge or consolidate the department with other offices.

The body of law which governs the Louisiana insurance industry is the Louisiana Insurance Code, Title 22 of the Louisiana Revised Statutes of 1950. These laws empower the commissioner and the Department of Insurance to regulate the business of insurance companies. (See "Department of Insurance" beginning on page 2H-4.)

SYSTEMS FOR RATEMAKING

Until January 1, 2008, the Louisiana Insurance Rating Commission will continue to exercise authority over property and casualty insurance rates. Created in 1948, the Insurance Rating Commission is a seven-member commission of which six members are appointed by the governor. The statutory purpose of the commission is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this Part. The commission had no authority to independently change or set any rates. The power to impose rates on insurers was reserved to the legislature as evidenced by the Omnibus Premium Reduction Act of 1997 (Act No. 1476) that required a 10% reduction in the premiums for motor vehicle liability insurance and a 20% reduction for uninsured motorist coverage that excludes noneconomic losses.

In 2003, the legislature limited the commission's rating authority in Act No. 351 by allowing insurance companies to adjust their rates for personal lines of property and casualty insurance (auto and homeowners) by up to 10% above or below their existing rates without prior approval by the commission. This marked a victory for free-market proponents and a radical departure from the state's traditional regulatory scheme. The commission's prior approval authority applied only to rate changes outside of the 10% limit. In 2004, with the enactment of Act No. 878, the legislature also deregulated commercial lines of insurance by providing that their rates are deemed approved after being on file for forty-five days with the office of property and casualty without disapproval. The act also provided that all commercial insurers, except with regard to workers' compensation and medical malpractice insurance, with not less than \$10,000 in annual premiums are required to file insurance rates with the office of property and casualty for informational purposes only.

Act No. 459 of the 2007 Regular Session provides for the abolishment of the Louisiana Insurance Rating Commission, effective January 1, 2008, and the transfer of much of its powers, duties, and functions to the commissioner of insurance. The commissioner shall have the exclusive authority to accept, review, and approve any application for insurance rates or rate changes for all lines of property and casualty insurance. The legislation also creates a "file and use" system for property and casualty insurance rates. Each application for a rate change is to be on file with the commissioner of insurance for forty-five days, and unless disapproved in writing within that forty-five days, the application is deemed approved. The law allows the commissioner to reduce or eliminate this waiting period by rule, regulation, or order. The act also preserves the exemption that all commercial insurers, except with regard to workers'

compensation and medical malpractice insurance, with not less than \$10,000 in annual premiums are required to file insurance rates with the office of property and casualty for informational purposes only.

The legislature established special criteria for insurance rates in noncompetitive markets. The commissioner of insurance is required to regularly monitor the degree and existence of competition in the state. After being given notice that a reasonable degree of competition does not exist in a market, the commissioner has the authority to hold a fact finding hearing to determine if a competitive market exists. An illustrative list of factors the commissioner may use in determining the competitiveness of a market are provided in R.S. 22:1402.1. If the commissioner determines that a competitive market for insurance does not exist and issues a noncompetitive ruling the rates in that market shall be regulated in accordance with the statutory provisions applicable to noncompetitive markets. Any insurance company having a rate in effect at the time the commissioner determines a competitive market does not exist may be required to furnish supporting information within thirty days of a written request by the commissioner.

MITIGATION DISCOUNTS

In 2007, the legislature passed Act No. 323 that authorized premium discounts or adjustments for compliance with building codes and for damage mitigation. The stated purpose is to lower insurance premiums on properties constructed or modified to withstand wind damage. The act mandates that any insurer requesting a rate revision must also provide an actuarially justified discount, credit, rate differential, adjustment in deductible, or other adjustment to reduce the insurance premium when the property owner complies with the State Uniform Construction Code or installs mitigation improvements to their property.

INSURE LOUISIANA INCENTIVE PROGRAM

In 2007, the legislature passed Act No. 447 establishing the Insure Louisiana Incentive Program in the state treasury to promote economic development and stability in Louisiana by encouraging additional insurers to participate in the voluntary property insurance market. This program would also serve to reduce the volume of business written by the Louisiana Citizens Property Insurance Corporation. The legislature provided the program with \$100 million in funding for capital matching grants to insurers writing new property insurance in Louisiana. The program authorizes the commissioner of insurance to approve grants ranging from \$2 million to \$10 million to qualified property insurance companies. The key requirements that applicants must meet to qualify for the program include: (1) maintaining capital and surplus amounts of not less than \$25 million; (2) maintaining a risk-based capital ratio of 500%; and (3) proof of existing certificate of authority or simultaneously filed application. The public invitation requesting applications for participation in the program was issued by the commissioner on October 2, 2007, and remained open until November 1, 2007. The commissioner is required to give preference to domestic insurers during the initial allocation process and shall allocate 20% of the total amount of grant funds available to domestic insurers. At the time of this writing, approximately six insurers have applied for \$34 million in state incentives which accounts for about one-third of the \$100 million state fund established to entice companies to expand or begin writing property insurance coverage in the state. The commissioner of insurance is expected to approve or reject the applications by November 29, 2007. If all the \$100 million in funds are not allocated, a second invitation for grant applications shall be issued and additional companies may then apply for the remaining funds while those companies already receiving grants will be allowed to apply to have their grants increased up to

the \$10 million limit.

Any company that receives a grant through this program will be subject to the following property insurance requirements: (1) net written premiums must be at least \$2 for each \$1 of combined insurer capital, which includes insurer allocated capital and the matching grant; (2) the property insurance written must be residential, commercial, monoline, or package property and include equal wind and hail coverage; (3) at least 25% of net written premiums must be from policyholders formerly insured by the Louisiana Citizens Property Insurance Corporation and with 50% located in the 37 parishes included in the Gulf Opportunity Zone Act in Louisiana (the parishes most effected by Hurricanes Katrina and Rita); and (4) by the end of the second year, at least 50% of net written premiums must be received from policyholders located in the 37 parishes included in the Gulf Opportunity Zone Act in Louisiana. Insurers who fail to comply with the statutory requirements of the program may be held in default and required to repay any unearned portion of the matching capital fund grant plus legal interest from the date of the commissioner's default declaration.

Beginning July 1, 2008, the act authorizes nonrefundable tax credits against individual income tax each tax year for 7% of the premiums on a homeowner's insurance policy, condominium owners' insurance policy, or a tenants homeowners' insurance policy paid by the individual during the tax year for the primary residence of the individual, minus any tax credit provided for the Louisiana Citizens Property Insurance Corporation's assessment. The estimated total of tax credits statewide is between \$105 million and \$110 million.

DEPARTMENT OF INSURANCE

The Department of Insurance is comprised of the following programmatic offices, in addition to the commissioner's office and the office of management and finance:

- Office of Property and Casualty

The office of property and casualty is responsible for the regulation of property and casualty insurance rates, the review of insurance rates, the licensing of insurance rating organizations, and such additional duties and functions as are assigned by the commissioner of insurance. (R.S. 36:688(B)) Specifically, this office includes the actuarial staff of the department which makes recommendations to the commissioner of insurance on insurance rates.

- Office of Financial Solvency

The office of financial solvency is responsible for examining and monitoring the financial condition of all companies approved to conduct the business of insurance in this state. Specifically, the office performs financial and market conduct examinations, analyzes financial statements and other required filings of insurers, determines the adequacy of reserve liabilities established by insurers, ensures that reserve requirements are maintained and insurer investments are made in accordance with state law, and validates and maintains the recordation of securities pledged to the commissioner as deposits for the protection of Louisiana policyholders. The goal of the office is to detect those adverse financial and other conditions that will allow for early identification of financially troubled insurers.

- Office of Receivership

The office of receivership manages all insurance companies placed in conservation or receivership. In conservation, a failing insurer must have the office's approval for all transactions. Receivership includes rehabilitation, in which the department takes title to a failing insurer's assets, and liquidation, in which the office determines creditors and citizens due to receive the assets of an insolvent company. The goal of the rehabilitation process is to restore troubled insurers to financial health whenever possible. Absent successful restoration of the insurers' financial status, the goal of liquidation is to maximize the value of the assets of the failed insurers and to distribute assets equitably in accordance with the priority of claims prescribed by law.

- Office of Licensing and Compliance

The office of licensing and compliance regulates the licensing and monitors the market conduct of individuals and companies engaged in the insurance business in this state. Specifically, it conducts examinations of insurance producers (agents, brokers, and solicitors); issues producer and company licenses; resolves consumer complaints and provides consumer education programs and services relative to property and casualty insurance and life insurance and annuities; approves policy forms for use by insurers; investigates reported incidences of suspected insurance fraud and performs background checks for purposes of producer and company licensing; and assists minorities by establishing educational and information services to foster a greater awareness of opportunities available in the insurance industry.

- Office of Health Insurance

The office of health insurance is responsible for health insurance pilot programs as established by the legislature, research and development of rules and regulations to implement health insurance reform legislation, research and development of health insurance reform measures that broaden the availability of health insurance coverage in the state, liaison activities for the Department of Insurance with other state and national agencies for policy on health insurance, preparation of proposed health insurance reform legislation by the department, general research and implementation issues concerning health insurance policy, and additional duties and functions as assigned by the commissioner. (R.S. 36:694) Specifically, the office assists and protects consumers with health care coverage needs, reviews health insurance related contract forms, provides senior citizens with health-related counseling through the Senior Health Insurance Information Program (SHIIP), and reviews health maintenance organization (HMO) provider networks and accreditation bodies for quality assurance.

- Office of Consumer Advocacy

The office of consumer advocacy is the newest office of the department, created by Act No. 222 of the 2007 Regular Session. The office performs the following functions: (1) receiving inquiries and complaints from consumers; (2) preparing and disseminating such information as the department deems appropriate; (3) providing direct assistance and advocacy for consumers who request such assistance or advocacy; (4) reporting, with respect to apparent or potential violations of law or applicable rules or regulations by a person or entity licensed by the department, such violations to the appropriate division or office of the department, which may take further action as it deems appropriate; and (5) ensuring compliance with the policyholder bill of rights. This bill of rights, also enacted by Act No. 222, can be found at R.S. 22:1455.

AGENCIES AND ASSOCIATIONS

A number of boards and commissions are associated with the Department of Insurance. These include: the board of directors of the Property Insurance Association of Louisiana (PIAL); the Louisiana Automobile Insurance Plan (LAIP); the Louisiana Property and Casualty Insurance Commission; the Louisiana Health Care Commission; the Louisiana Insurance Guaranty Association (LIGA), the Louisiana Citizens Property Insurance Corporation, the Life and Health Guaranty Association (LLHIGA), and the Louisiana Health Plan.

Property Insurance Association of Louisiana

Every insurance company in Louisiana that writes fire insurance is required to adhere to the rates adopted by the Property Insurance Association of Louisiana (PIAL). The rates adopted by PIAL are subject to approval by the commissioner of insurance and individual insurers may deviate from the rates with the approval of the commissioner. PIAL inspects and assesses various types of risk that are rated by schedule for property damage insurance. It is the filing organization for rates, rules, and forms for homeowners, dwelling fire, commercial fire, and farm owners insurance. The association surveys municipal areas and issues fire protection grading for those areas. It is fully funded by the members of the association through an assessment apportioned according to direct premiums received by each member.

The board of directors of the PIAL consists of 17 members as follows: nine members elected by the membership; the commissioner of insurance; three members appointed by the commissioner; a representative of the Professional Insurance Agents of Louisiana; a representative of the Independent Insurance Agents of Louisiana; the chairman of the House Insurance Committee (ex officio); and the chairman of the Senate Insurance Committee (ex officio).

In August 2007, Commissioner of Insurance James Donelon announced plans to introduce legislation to abolish PIAL and the Louisiana Automobile Insurance Plan (LAIP), the auto insurer of last resort in the state. The commissioner has labeled these entities as secretive and bureaucratic layers in the state that act as impediments to a healthy insurance environment. He opined that opening the process to public scrutiny would lead to more accountability. Louisiana is one of the few states that acts as a "rating bureau", meaning that it inspects fire districts and assigns a number from one to ten which insurance companies use to assist in determining property insurance premiums. Further, the commissioner believes that the fire rating services currently performed by PIAL may be handled at less cost by a national organization, such as the Insurance Services Office (ISO), as is done in approximately 45 other states.

Louisiana Automobile Insurance Plan

The Louisiana Automobile Insurance Plan (LAIP) was created in 1972 as a voluntary agreement to provide automobile insurance coverage to eligible risks who are unable to obtain liability coverage through the voluntary market. Any insurance agent holding a valid license to transact automobile insurance business in the state of Louisiana may write business through LAIP. The 9-member governing committee of the LAIP consists of: the commissioner of insurance or his designee; a member designated by the commissioner of insurance; a representative designated by the Louisiana Association of Fire and Casualty Insurance Companies; appointments by the president of the Senate and the speaker of the House of Representatives; and four members selected by the committee and approved by the commissioner of insurance.

Louisiana Citizens Property Insurance Corporation

Created in 2003 by Act No. 1133, the Louisiana Citizens Property Insurance Corporation (La. Citizens) is a private, nonprofit corporation created to operate the residual market insurance programs known as the FAIR Plan and the Coastal Plan to provide essential property insurance for commercial and residential properties in this state. The corporation is governed by a 15-member board of directors consisting of business and insurance industry representatives appointed by the governor, the commissioner of insurance, and chairmen of the House and Senate insurance committees. All insurance companies that write property insurance on a direct basis in Louisiana are required to be members of the plans. The corporation is funded by the premiums from the insurance issued by the plans and an assessment against the member companies to cover any shortfall between revenues and exposure. The member companies are assessed on a percentage of their total written property premiums. The corporation may impose emergency assessments, issue bonds, pledge assessments, and eventually depopulate the plans. (R.S. 22:1430 et seq.)

The FAIR Plan was established by the legislature in 1968 for the purpose of making certain there is adequate fire, extended, vandalism, windstorm, hail storm, and homeowners property insurance in designated areas in Louisiana. The FAIR (Fair Access to Insurance Requirements) Plan is a "high risk" pool aimed primarily at inland areas and inner cities where it is difficult to obtain property insurance through ordinary insurance markets.

The Coastal Plan, created by the legislature in 1969, is a "high risk" pool for property insurance for those coastal areas of Louisiana designated by the Louisiana Insurance Rating Commission. It is almost identical to the FAIR plan except that it serves a different geographical area of the state, the coastal area below the Intercoastal Waterway.

La. Citizens is designed to be noncompetitive and is mandated to charge insurance rates that are higher than the rates charged in the private, voluntary market. In accordance with R.S. 22:1430.12, rates for the corporation's residential property policies must be at least ten percent higher than the rates charged among the ten insurers with the greatest total direct written premium (DWP) in each parish for the preceding year. Rates must be established on a per parish basis and must be adjusted at least annually to maintain the price differential between the private and residual markets. In 2007, the legislature enacted R.S. 22:1430.12(D) to provide that if a noncompetitive market is determined to exist, the corporation must charge the higher of the actuarial rate or the rates equal to the highest of the top ten insurers with the greatest total direct written premium for residential property insurance until August 15, 2010. La. Citizens' ten percent rate in excess of the rates charged among the ten insurers with the greatest total direct written premium in each parish for that line of business in the preceding year shall not apply to Calcasieu, Cameron, Vermilion, Iberia, St. Tammany, Orleans, Jefferson, St. Bernard, Plaquemines, Terrebonne, and Lafourche.

In accordance with R.S. 22:1430.10, regular assessments may be levied on insurers, emergency assessments may be levied on all property policyholders of the state to address deficits in the plans, and market equalization charges may be levied on La. Citizens policyholders. Regular assessments are levied against assessable insureds to remedy a deficit in either of La. Citizens plans. Insurers are authorized to recoup regular assessments by surcharging their policyholders within twelve months. When La. Citizens' deficit is less than or equal to ten percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit amount is recovered through regular assessments. Emergency assessments are levied directly on property policyholders and may be multi-year to secure bonds

issued by the corporation to address any deficit situation. Emergency assessments cover losses in excess of all profits, excess reserves, reinsurance proceeds, and regular assessments. The maximum amount that can be collected via each assessment is twenty percent of the amount of premium (10% per plan).

The present assessments being levied by La. Citizens are the direct result of losses on insured property caused by the 2005 hurricane season. In years when there are no significant catastrophic losses, the corporation will likely collect enough premiums to cover any insured losses. However, the massive losses associated with hurricanes Katrina and Rita cost the corporation over 1.2 billion in losses. La. Citizens was compelled to invoke statutory regular and emergency assessment provisions to repay the bonds issued to pay the claims of its policyholders following the storms. In 2006, the regular assessment was fixed at 18.27% of insurance companies net premiums. The following year, each homeowner and commercial property policyholder, at issuance or renewal of each policy, will pay an emergency assessment of 3.6% of net annual premium. Barring state intervention, annual emergency assessments will continue until the bond debt is satisfied.

Act No. 4 of the 2006 Second Extraordinary Session authorized a refundable income tax credit effective for all taxable periods beginning on or after January 1, 2006, which applies to assessments, surcharges, and market equalization charges levied by La. Citizens. The legislature appropriated \$239 million to refund property insurance policyholders who paid these assessments to La. Citizens. In an effort to expedite relief to policyholders who have paid La. Citizens assessments the legislature enacted Act No. 382 of the 2007 Regular Session that affords policyholders the immediate option to recoup assessments charged on or after January 1, 2007. These rebates may be obtained as soon as they are paid by filing form R540 INS with the Louisiana Department of Revenue. To address the potential inequity in the amount of assessments being paid by policyholders and insurance companies, the legislature passed Act No. 235 during the 2007 Regular Session. This act authorizes a prorata calculation of emergency or regular assessments based on written premiums over the life of the policy. Assessments may be adjusted accordingly if a policy of insurance is cancelled or modified and results in an increase or decrease in premium.

Act No. 377 of the 2007 Regular Session establishes a take-out plan for the depopulation of La. Citizens. Private insurers may participate in a request for proposal process to assume policies written by La. Citizens. Not less than once per calendar year, the corporation shall offer its in-force policies for removal from the voluntary market. The in-force policies shall be bundled in groups of not less than 500 policies and include both policies issued under the Coastal and FAIR Plans. Twenty-five percent of the bundled policies must come from the following parishes: Calcasieu, Cameron, Vermilion, Iberia, St. Tammany, Orleans, Jefferson, St. Bernard, Plaquemines, Terrebonne, and Lafourche. At least 75% of those policies must be from insurance policies covering residential structures. Insurers that are admitted to write homeowners or commercial insurance in Louisiana may submit a take-out plan to the Department of Insurance for review and approval.

Louisiana Insurance Guaranty Association

The Louisiana Insurance Guaranty Association is more commonly referred to as "LIGA". LIGA was created by the legislature in 1970 as a "private nonprofit unincorporated legal entity" that may not be deemed an agency of the state for any purpose. LIGA does not receive any money from the state general fund.

LIGA was created to pay the outstanding claims against property and casualty insurance companies who have become insolvent. LIGA does not cover the following direct insurance: life, health and accident, title, disability, mortgage guaranty, financial guaranty, vehicle breakdown, and ocean marine and certain insurance involving investment risks and credit risks.

Any licensed property and casualty insurer who transacts insurance business in Louisiana is required to be a member of LIGA as a condition of doing business in this state. All members are subject to an annual assessment of up to two percent of the direct written premiums in Louisiana. In addition to the assessment, LIGA receives from the Department of Insurance the investment income and proceeds from the liquidation of insolvent insurance companies. These revenues provide the funds to pay the outstanding claims against the insolvent insurance companies.

LIGA's board of directors consists of nine persons as follows: two consumer representatives appointed by the commissioner of insurance, one Louisiana resident appointed by the president of the Senate, one Louisiana resident appointed by the speaker of the House, and five persons appointed by member insurers who are approved by the commissioner of insurance.

Louisiana Property and Casualty Insurance Commission

The Louisiana Property and Casualty Insurance Commission was created by the legislature in 2003 to replace the Council on Automobile Insurance Rates and Enforcement (CAIRE). The commission is to review and examine the availability and affordability of property and casualty (auto and homeowners) insurance in Louisiana. The commission is also to provide oversight and recommendations regarding programs and the enforcement laws that affect automobile insurance rates. The commission submits an annual report of its recommendations on laws and projects affecting property and casualty insurance to the governor, the commissioner of insurance, and the legislature. The 22-member commission includes: representatives of state and local law enforcement agencies, the attorney general, the assistant secretary of the office of motor vehicles, the executive director of the Louisiana Highway Safety Commission, representatives of agent organizations, members of the House and Senate insurance committees, consumer representatives, and the commissioner of insurance.

Louisiana Health Care Commission

The Louisiana Health Care Commission, created by the legislature in 1992, serves as a policy and planning board that undertakes comprehensive review of health care and health insurance issues facing the state. The commission assesses the availability, affordability, and delivery of quality health care in the state by examining such topics as the rising costs of health care, including the cost of administrative duplication, the costs associated with excess capacity and duplication of medical services, and the costs of medical malpractice and liability. The commission further examines the adequacy of consumer protections, as well as the formation and implementation of insurance pools that better assure citizens the ability to obtain health insurance at affordable costs and that encourage employers to obtain health care benefits for their employees by increased bargaining power and economies of scale for better coverage and benefit options at reduced costs. The commission also studies the implementation issues related to national health care reform initiatives. The commission annually makes recommendations on health care and health insurance in Louisiana to the commissioner of insurance who subsequently submits a report to the legislature on such matters.

The commission is comprised of 50 members representing a broad spectrum of interests,

including health insurers, health care providers, and community leaders, as well as representatives of consumer interests, the governing boards of state colleges and universities, the House and Senate insurance committees, the commissioner of insurance, and the Department of Health and Hospitals.

Louisiana Health Plan

The Louisiana Health Plan was originally created by the legislature in 1990 as the Louisiana Health Insurance Association. Its initial purpose was to administer the High Risk Insurance Pool, a major medical health benefits plan, which provides health insurance policies to Louisianians who are uninsurable in the private health insurance market, often because of pre-existing medical conditions. Premiums for the high risk pool are currently 150% of the average premium charged by the top five individual health insurance carriers providing coverage in Louisiana. In addition to premium income, the high risk pool is funded by a mandated service charge on hospital admissions and outpatient surgery in Louisiana, to be paid by patients' insurers, and an annual legislative appropriation of \$2 million. Enrollment in the high risk pool is restricted by the amount of funding for the pool.

During the 1997 Regular Session, the Louisiana Health Plan was additionally authorized to administer the state's HIPAA pool. This pool is the state's alternative mechanism for implementing the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). The purposes of that law are to make insurance coverage from one group employment situation to another group more "portable" and to provide coverage to those persons who move from an eligible group into the individual insurance market. Premiums for the HIPAA pool are currently 200% of the average premium charged by the top five individual health insurance carriers providing coverage in this state. In addition to premium income, the HIPAA pool is funded by assessment of insurance carriers and health maintenance organizations doing business in Louisiana. As enrollment in the HIPAA pool expands, the Louisiana Health Plan is authorized to increase the amount of this assessment accordingly.

The Louisiana Health Plan is governed by a 13-member board of directors, including representatives of health insurance carriers, hospitals, physicians, consumers, and the House and Senate Committees on Insurance, as well as the commissioner of insurance or his designee.

Louisiana Life and Health Guaranty Association

The Louisiana Life and Health Guaranty Association, commonly known as LLHIGA, was created by the legislature in 1991. Modeled on LIGA, LLHIGA is a "private nonprofit unincorporated legal entity" that may not be deemed an agency of the state for any purpose and that receives no money from the state general fund.

LLHIGA was created to pay the outstanding claims against life and health insurance companies who have become insolvent. Any licensed life or health insurer, not including a health maintenance organization or a self-insured employee benefits plan, who transacts insurance business in Louisiana is required to be a member of LLHIGA as a condition of doing business in this state. All members are subject to an annual assessment of up to two percent of the direct written premiums in Louisiana. In addition to the assessment, LLHIGA receives from the Department of Insurance the investment income and proceeds from the liquidation of insolvent insurance companies. These revenues provide the funds to pay the outstanding claims against the insolvent insurance companies.

When a member insurer is found to be insolvent and is ordered liquidated, a special deputy receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. The task of servicing the insurance company's policies and providing coverage to Louisiana's resident policyholders becomes the responsibility of the guaranty association. The protection provided by the guaranty association is based on Louisiana law and the language of the insolvent company's policies at the time of insolvency.

LLHIGA's 10-member board of directors consists of eight representatives of member insurers, appointed subject to the approval of the commissioner of insurance, one Louisiana resident appointed by the president of the Senate, and one Louisiana resident appointed by the speaker of the House.

HEALTH INSURANCE ISSUES

Recent federal and state estimates of the number of uninsured Louisianians vary widely. Based on the U.S. Census Bureau's 2007 Current Population Survey, approximately 921,000 Louisiana residents lack health insurance and are not covered under the federal Medicaid or Medicare programs. This gives the state an uninsured rate of 21.9%, the third highest such rate in the nation. However, preliminary results from the 2007 Louisiana Health Insurance Survey, conducted for the Department of Health and Hospitals by LSU's Public Policy Research Lab, estimates the number of uninsured Louisiana residents without Medicaid or Medicare coverage at 601,250, yielding an uninsured rate of 15.9%. Whichever estimate is accepted, finding a way to make health insurance accessible and affordable to this population, which is often defined as the "working poor", remains a critical issue to be further addressed by the state. The only effort in recent years which has had a significant impact on Louisiana's uninsured rate has been extension of health coverage to low-income children under the Louisiana Children's Health Insurance Program (LaCHIP). (See "Chapter 2, Part D. Health and Social Services" beginning on page 2D-1 for further information on serving the uninsured and on LaCHIP.)

The issue of mandating certain health insurance benefits also remains a volatile one for the legislature. Current state law requires health insurers and/or health maintenance organizations (HMOs) to cover such diverse services and medical conditions as screenings for breast, cervical, prostate, or colorectal cancer, bone mass measurement, immunizations, diabetes, cleft lip and cleft palate, certain clinical cancer trials, and certain severe mental illnesses. Alternatively, the legislature has in the past rejected mandates for coverage of contraceptives and gastric bypass surgery. The debate over mandated benefits generally centers on consumer protection versus cost. Proponents argue that mandates are necessary to ensure adequate benefits for consumers and that, to the extent that they provide for early detection and treatment of illnesses, some of these mandates may decrease the ultimate cost of health care and health insurance. Opponents, however, contend that mandated benefits offset any consumer gains by raising the cost of health insurance, making it less affordable and ultimately increasing the number of the uninsured. It is also important to note that state law requires that an impact report be prepared by the Legislative Fiscal Office for any bill requiring mandated health benefits or mandated offering of health benefits. This impact report is to "be factual, brief, and concise, and... provide an estimate in dollars of the immediate and long-range fiscal effect of the measure. If no dollar estimate is possible, the impact report shall set forth the reasons therefor. An impact report shall not contain reference to the merits of the measure." (R.S. 24:603.1) During the 2003 Regular Session, the legislature placed a five-year moratorium, through December 2008, on health insurance mandates (Act No. 1115). However, the moratorium is only statutory; therefore, it could be superceded by a subsequently enacted mandate as a later expression of legislative will.

With the advent of managed care, assuring the quality of medical care provided by health plans has also developed as a legislative concern. As the issue of patient rights awaits action by congress, the legislature has enacted a number of important consumer protections such as guaranteeing direct access to obstetricians/gynecologists, prohibiting the unreasonable denial of emergency care claims, and prohibiting incentives to restrict, delay, or deny medically necessary care. In addition, legislation was enacted in 1999 which establishes standards for insurers and HMOs determining the medical necessity of health care services and requires internal and independent reviews of denials of requests for coverage. It is important to note, however, that certain employer-sponsored plans are exempt from certain facets of state regulation of insurance, pursuant to the federal Employee Retirement and Income Security Act (ERISA). Specifically, ERISA preempts states from regulating employer-provided health coverage when the employer "self-insures", that is, when the employer assumes all or some financial risk for the care provided to its employees rather than simply purchasing coverage from an insurer. Thus, many state consumer protection laws are preempted and inapplicable to the estimated 40% of employed Louisiana citizens covered by self-insured plans.

The issue of accessibility to health insurance has also been a subject of legislative debate. Louisiana law currently provides for guaranteed continuation of group insurance, guaranteed renewal of health insurance coverage, limitations on preexisting medical condition exclusions from coverage, prohibitions on discrimination by group plans against individuals based on health status (modified community rating), and guaranteed portability protections. While many of these protections emanate from the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), other protections, such as modified community rating, predate that federal legislation. The Louisiana Health Plan is particularly important in this regard as it not only provides access through the High Risk Pool to health insurance coverage for those individuals unable to obtain such coverage in the private market, but also administers the HIPAA pool to fully implement that federal legislation in Louisiana.

COMPULSORY AUTOMOBILE LIABILITY INSURANCE – UNINSURED MOTORIST

An important legislative issue regarding automobile insurance has been compulsory liability insurance. Between 1952 and 1977, Louisiana law only required that a person furnish proof of liability insurance after an accident. Failure to do so resulted in the suspension of driving privileges and vehicle registration. Since the mid-1950's, many attempts were made in Louisiana to pass legislation requiring pre-accident security, modeled after the Massachusetts compulsory liability insurance laws. The Massachusetts program, which originated in the 1920's, required the operator of a motor vehicle to provide proof of insurance coverage before he could register his vehicle. The program also provided for criminal penalties for operating an unregistered vehicle.

Act No. 115 of the 1977 Regular Session enacted R.S. 32:861 et seq., which required a motor vehicle owner to declare that he had the minimum insurance coverage (\$5,000/\$10,000) before obtaining a license plate or inspection sticker. In addition to loss of registration and driving privileges, criminal penalties were added for making a false declaration.

Act No. 237 of the 1984 Regular Session increased the minimum liability limits to \$10,000 for injury or death of one person, \$20,000 for injury or death of more than one person, and \$10,000 for property damage (10/20/10 coverage).

In 1984, pursuant to Act No. 212, the legislature added the requirement that proof of insurance be in the vehicle while it is being operated on a public road or highway. Failure to provide the

proof of insurance when requested by a law enforcement officer would result in penalties if the proof of insurance was not provided within ten days.

Since 1984, the penalties for failure to have proof of insurance in the vehicle have been increased in order to induce compliance. In 1992, pursuant to Act No. 805, the seizure of license plates was added as a penalty for noncompliance.

In 1997, pursuant to Act No. 1486, the legislature authorized the impoundment of a vehicle when the driver could not produce the required proof of insurance upon the request of a law enforcement officer. It is the opinion of the Department of Insurance that the impoundment law will eventually be a factor in bringing down insurance rates. However, some insurance companies opine that it may have the effect of increasing rates because it forces more high risk drivers into the insured pool. With regard to enforcement, it is reported that in New Orleans alone in the first five months of enforcement (June through October, 1999), 2,657 cars were impounded because of lack of insurance. As much as 40% to 50% of the impounded vehicles remained unclaimed by the owners.

Additionally in 1997, with the enactment of Act No. 1476 ("No Pay, No Play"), an uninsured motorist who is the victim in an automobile accident is prohibited from collecting the first \$10,000 of personal injury and the first \$10,000 of property damages in a civil action. Under this same act, a 10% reduction in automobile liability rates was required and is now in effect. The legislature included these provisions in the same act in order to guarantee a reduction in automobile premiums while reducing the exposure of liability by insurance companies to motorists who are uninsured.

In 2007, the legislature passed Senate Bill No. 223 that proposed to increase the minimum liability coverage limits for automobile insurance from 10/20/10 (\$10,000 for bodily injury for one person, \$20,000 for all injuries, and \$10,000 for property damage) to 25/50/25. A segment of insurers with approximately 34% of the state's automobile insurance market estimated an average increase of 30% in the liability rates of drivers who currently carry minimum limits. Proponents of the increase indicated that it was long overdue as the present liability limits became effective in 1984 while the cost of medical treatment and automobile replacement has steadily increased. Many opponents to this measure indicated that doubling the minimum liability limits in a post-Katrina economic environment would only add another exorbitant expense and force many drivers who cannot afford the increase to forgo insurance. Ultimately, the instrument failed to be enacted into law as Governor Kathleen Blanco vetoed the bill, citing the probability of increased uninsured drivers resulting from the "dramatic increases in premiums as much as 20% on average".

INSURANCE CLAIMS

Act No. 43 of the 2007 Regular Session extended a policyholder's right of action against an insurer from 12 to 24 months after the inception of the loss when the first-party claim arises under certain enumerated policies of insurance. The act also extended the prescriptive period for first-party suits based on the standard fire insurance policy from 12 months to 24 months.

Prior to 2006, in accordance with R.S. 22:658 and 1220, any insurer who arbitrarily, capriciously, or without probable cause failed to make payment on or a written offer to settle a claim within 30 days after receipt of "satisfactory written proofs" was subject to a bad faith penalty of 25% damages on the amount found to be due from the insurer or \$1,000, whichever is greater. In 2006, Act No. 813 increased the bad faith penalty from 25% to 50% and also made insurers

acting in bad faith responsible for any attorney fees and costs associated with litigation to recover such damages.